IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGA

WRIT PETITION NO. 111 /200

Petitioner : Gurumukh Singh Hora S/o Late Shri Amriksingh Hora, Aged about 53 Yrs Chairman, Chhattisgarh State Co-operative Marketing Federation Ltd., R/o Vikas Sabji, Fal-Ful Utpadak Evam Vipanan Sahkari Samiti, Distt. Kawardha

VERSUS

Respondents :

1. State of Chhattisgarh through Secretary, Co-operative Deptt. Secretariate, Raipur (Ch.Garh)
2. Registrar, Co-operative Societies (Chhattisgarh)
3. Deputy Registrar, Co-operative Society (Election Officer) Rajnandgaon (Chhattisgarh)
4. Addl. Registrar, Co-operative Society, Krishak Bhawan, Krishak Nagar, Labhandi, Raipur (Chhattisgarh)
5. Chhattisgarh State Co-opera Marketing Federation Ltd., a society registered under provisions of M.P.Co-opera Societies Act, having its office at 880, Civil Lines, Raipur (Chhattisgarh)
6. Vasudev Chandrakar, Director, Durg.
7. Mohan Chandrakar, Director, Distt. - Bilaspur.
8. Ayta Ram, Director, Dantewara.
9. Pradeep Kumar Gupta, Director, Jashpur Nagar.

Contd....

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Writ Petition No.111/2000

Gurumukh Singh Hora

vs.

State of Chhattisgarh
and others.

O R D E R

POST FOR :

Sd/-
R.S. Garg
Judge

18/6/2001

Shri M.V. Purwaja
for petitioner

Shri K.S. Jaytwani Adv
for Respts 6 & 8

Shri S. Gupta
for Res No 7

(470) AFR

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.111/2000

Gurumukh Singh Hora

vs.

State of Chhattisgarh
& others.

Shri Alok Aradhe, learned counsel for the petitioner.

Shri Ravindra Shrivastava, learned Advocate General, for the State.

Shri M.D. Sharma, learned counsel for respondent no.7.

Shri R.S. Jaiswal, learned counsel for respondents no.6,8 and 9.

O R D E R

The petitioner Gurumukh Singh Hora, the Chairman of Chhattisgarh Co-operative Marketing Federation, has challenged the correctness, validity and propriety of the order dated 8-12-2000 passed by the Additional Registrar, Co-operative Societies, Raipur (respondent no.4).

2. The facts necessary for the disposal of the present petition are that the petitioner is the Chairman of Chhattisgarh Co-operative Marketing Federation. According to him, he has assumed the charge of the office on 30-10-2000, therefore, under the provisions of Rule 43-A(2) of M.P. Co-operative Societies Rules, 1962 within one year of assumption of the charge by him, a no confidence motion cannot be moved against him but as a no confidence motion has been moved against him and as the Additional Registrar

has appointed an Officer to preside the meeting, the actior is bad. The petitioner, in fact, was elected as Chairman of M.P. State Co-operative Marketing Federation on 4-1-97 for a period of five years and unless a mishap occurs he could continue upto 3-1-2002. On 1-11-2000, the State of Chhattisgarh came into being and in accordance with the provisions of M.P. Sahkari Society (Punargathan Aur Nirman) Adhyadesh(4/2000) the said M.P. State Co-operative Marketing Federation (hereinafter referred to as M.P. Federation) was divided into two and the Chhattisgarh Rajya Sahkari Vipanan Sangh Maryadit (hereinafter referred to as Chhattisgarh Federation) also came into being. The petitioner as he says assumed charge of Chhattisgarh Federation on 30-10-2000. According to him, on 19-10-2000 in the United Madhya Pradesh, 19 Directors had moved a no confidence motion against him but after some time 11 Directors withdrew the said motion. Within twenty days of the formation of the State of Chhattisgarh and creation of Chhattisgarh Federation, on 20-11-2000, a no confidence motion under Ex.P/2 was moved. On 27-11-2000, the petitioner wrote to the Managing Director of Chhattisgarh Federation that as he has assumed charge on 30-10-2000, in accordance with the rule 43-A of the M.P. Co-operative Societies Rules (hereinafter referred to as the Rules), a no confidence motion could not be moved against him within one year. On 8-12-2000, the Additional Registrar, Co-operative Societies, Chhattisgarh, Raipur issued a notice and directed the Deputy Registrar to preside over the meeting. The petitioner is aggrieved by appointment of the Presiding Officer and the said no confidence motion. The present petition was filed on 12-12-2000 and came up for

hearing on 13-12-2000. One Mohanlal Chandrakar, a Director of Chhattisgarh Federation, made an application for intervention through Shri M.D. Sharma, Advocate. On 13-12-2000 itself, the petitioner filed some documents. The matter was taken up for hearing on 13-12-2000 itself and after hearing the parties, it was directed that Vasudev Chandrakar, Mohan Chandrakar, Ayta Ram and Pradeep Kumar Gupta be joined as parties as respondents no.6 to 9, copy of the petition and the annexures be also supplied to Shri Sharma, who was representing one of the interveners. The matter was directed to be listed for hearing on 14-12-2000. The newly joined respondent no.7 Mohan Chandrakar filed his reply alongwith certain documents. At the request of the counsel for the State, the matter was adjourned. On 15-12-2000, this Court admitted the petition for hearing and directed issuance of notice to the respondents no.5,6,8 and 9. After hearing the parties on the question of grant of interim relief, this Court directed that the respondents be restrained from carrying no confidence motion or holding a meeting for consideration of the said no confidence motion. The matter came up for hearing on 12-2-2001 but was adjourned. It again came up for hearing on 14-2-2001 and was directed to be listed for hearing on 2-3-2001. On 3-1-2001, the petitioner made an application for amendment of the petition. This Court had earlier directed that the proposed amendment appears to be as regards interpretation of certain provisions of law, therefore, the same will be taken into consideration at the time of final hearing. On 27-2-2001, the petitioner filed a rejoinder to his petition. The respondents no.6,8 and 9 submitted

their return dated 7-2-2001 on 8.2.2001. They contended that the reliance on Rule 43-A was misconceived because the petitioner did not enter the office or assumed the charge on 30-10-2000 but had continued in the said office. The said respondents also contended that on coming into force of M.P. Re-organisation Act,2000 the new State has come into existence and with a view to bifurcate the existing societies the said ordinance was promulgated. They also submitted that the elections of Madhya Pradesh Federation were held in the year 1996 and the petitioner was elected as Chairman on 4-1-1997, therefore, on bifurcation of the Society and coming into existence of the new Federation it could not be presumed that the petitioner had assumed charge for the first time. According to them, the law nowhere says that on coming into existence of the State of Chhattisgarh and bifurcation of the existing Federation the Directors and the Chairman would again assume charge. They have also stated that the respondents were justified in requisitioning the meeting for consideration of no confidence motion because the Committee had lost faith in the petitioner. It was also submitted by them that the petitioner had no right to challenge the order of the Additional Registrar. They also submitted that the petitioner in fact was continuing as Chairman of the Federation by clause 3 of the Ordinance and Section 61 of the M.P. Re-organisation Act. According to these respondents, four Directors out of seven had moved no confidence motion against the petitioner and by no stretch of imagination the said ~~movement~~ motion could be condemned as

bad, or contrary to law, or contrary to the provisions of bye-laws. The respondents no.1 to 4 had filed their return on 13-2-2001. These respondents contended that the existing State Level Co-operative Societies were reconstituted/bifurcated into M.P. Co-operative Societie and Chhattisgarh Co-operative Societies. They also submitted that the Ordinance only deals with the reconstitution of the State Level Co-operative Societies and maintains their status as representatives or office bearers by fiction but did not alter or modify any provision of M.P. Co-operative Societies Act or the Rules made thereunder. It is also submitted by these respondents that the words "till the expiry of their term under the provisions of M.P. Co-operative Societies Act,1960" employed in clause 3(2) of the Ordinance were simply used to continue the Societies and avoid a void. According to them, the intention of the legislation was to avoid election immediately and permit the elected authority or body to continue for rest of the term. According to them, a resolution for no confidence motion shall not lie in a case where the Chairman assumes charge of his office for the first time and not in a case where because of the fiction he continues in his office. The respondents no.1 to 4 also submit that a fair perusal of sub-clause (2) of clause 3 of the Ordinance would make it clear that the office bearers of the existing society shall continue to hold their office and no fresh tenure has been given to them. These respondents have prayed for dismissal of the petition.

3. On 29-3-2001, respondent no.1 alongwith an

application submitted a copy of the judgment of the High Court of Madhya Pradesh in Writ Petition No. 6240/2000 in the matter of Abdul Rashid vs. State of M.P. & others. On 12-4-2001, the respondents no.1 to 4 made an application for vacation of the interim order. On 12-4-2001 itself, the respondent no.7 also made an application for vacation of the stay order. The amendment application filed by the petitioner was replied by the respondents no.6,8 and 9 and, by respondent no.7. The matter came up for hearing before the Court on 26-4-2001 but it was directed to be listed on 2-5-2001. At the request of the parties, the matter was directed to be taken up on 9-5-2001, but because of the rush of the work the matter came up for consideration on 11-5-2001. My Lord The Chief Justice directed that the matter be listed before this Bench on 4-6-2001 for final disposal. The matter came up for hearing on 7-6-2001 and at the request of the parties it was taken up on 11-6-2001 and with the consent of the parties it was finally heard.

4. Shri Aradhe, learned counsel for the petitioner, submitted that according to bye-law no.28 of Federation, 16 elected Directors, each representing one district of the State of Chhattisgarh, and two elected Directors from representatives of other Co-operative Societies i.e. 18 elected Directors and nine others would constitute the Federation and as there are only seven Directors including the Chairman, there is no proper constitution of the Federation and, as according to rule 43-A a no confidence resolution is to be passed

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by majority of not less than 2/3rd of the total elected members of the Committee at a meeting held for this purpose, neither the meeting can be held nor the petitioner can be removed. Placing reliance upon the proviso appended to sub-rule (1) of Rule 43-A, it is submitted by him that resolution of no confidence shall not lie within a period of one year from the date on which the Chairman or Officer has taken charge of his office and as the petitioner has assumed charge on 30-10-2000 the resolution is premature. He also submits that the resolution has to be moved by 1/3rd of the elected members but in the present case the same has been moved by only five elected members, the motion is bad. It is further contended that the language of Rule 43-A is different from the language employed in Section 28 of M.P. Panchayat Raj Adhiniyam, 1993, Section 43-A of M.P. Municipalities Act, 1961 and Section 23A and 24 of the Municipal Corporation Act, 1956. The language of this Act and Rules shall prevail. It is also contended by him that the committee is to be constituted by as many as 28 members but in the present case on the date of the request of the motion there were only seven Directors, in absence of proper constitution of the committee the motion was bad and as the quorum of the elected members which should not be less than nine could not be availabl in the meeting, no meeting can be held. Referring to clause 3(b) of the Ordinance (4/2000), it is submitted by him that if the vacancies occur due to reconstitution of Society under sub-section 3(1) of the Ordinance, the 'reconstituted' and the 'corresponding new societies' may fill them by co-option or election or nomination by the

Registrar or the State Government in accordance with the provisions of the M.P. Co-operative Societies Act,1960 and the rules made thereunder. He also submitted that as in the Ordinance there is no provision relating to no confidence motion the office bearers would continue to hold the office till expiry of their term. Referring to the judgment of the High Court of Madhya Pradesh in the matter of Abdul Rashid (supra), it is contended that the office bearers shall continue till their term expires.

5. Shri Aradhe also submitted that provisions of law should be harmoniously construed so that illegalities are avoided and the intention of the legislature is properly projected. Taking exception to all those arguments, Shri Ravindra Shrivastava, learned Advocate General, submits that the petition is misconceived. He submits that proper reading and fair appreciation of Rule 43-A would mean that 2/3rd of the total elected members available on the date of the consideration of no confidence motion must pass the resolution and the words "total elected members" would not mean total elected members constituting the committee but would mean the total elected members who are holding the office on the date of the meeting. It is also submitted by him that the proviso appended to Rule 43-A(1) applies to a case where the office bearer or the Chairman have taken charge of their respective office for the first time but present not being a case like that but being a case of continuance in the office the said proviso has no application. He submits that the present Chairman assumed the charge of the office on 4-1-1997 and because of the fiction created by the Ordinance he is continuing in the

office, a no confidence motion could certainly be moved against him.

6. Referring to Section 16 of M.P. Co-operative Societies Act, it is submitted by him that on re-organisation or bifurcation of the society the new societies would come into operation and the registration of the old societies would come to an end, therefore, to avoid such legal eventuality the fiction was created under Section 3 of the Ordinance but that fiction does not mean that the person who was already holding the office would assume charge on the date of the reorganisation. It is also contended by him that in absence of the Ordinance every society would become defunct and to avoid this eventuality and avoid a situation of stand still the Ordinance was promulgated. Referring to Sections 48C and 53B of the Act it is contended by him that the committee has a power to remove the Chairman, so also the Registrar can also remove the Chairman or other office bearers.

7. Learned counsel for the interveners have supported the arguments of the learned Advocate General.

8. I have heard the parties at length and have perused the records.

9. In the matter of Abdul Rashid vs. State of M.P. and others (Writ Petition No.6240/2000) decided by the High Court of M.P. on 5-2-2001, the petitioner had challenged the validity of clause 3(2) of the Ordinance. The High Court after appreciating the rival contentions came to the conclusion that the said clause 3(2) of the Ordinance was not ultra vires.

10. Section 61 of the M.P. Reorganisation Act, 2000 reads as under :

> "61. Functioning of organisation,registered society or trust incorporated on behest of State Government-(1) Notwithstanding anything contained in the foregoing provisions of this Part of any other law for the time being in force, any organisation, registered society or trust, incorporated at the behest of the State Government, shall, on and from the appointed day, and until otherwise provided for in any law for the time being in force, or in any agreement between the successor States, or in any direction issued by the Central Government in consultation with the successor States, continue to furnctioning immediately before that day, and the Central Government may, after consulting the Governments of the successor States, issue directions in relation to such functioning.
>
> (2) Any directions issued under sub-section (1) may include directions regarding the-
> (i) reconstitution of the Board of Directors of the organisation, society or trust by whatever name it may be called; or
> (ii) appointment of the Chief Executive by whatever name it may be called; or
> (iii) regulations or byelaws, by whatever name they may be called; or
> (iv) assessment and apportionment of financial support, if any, provided by the existing State of Madhya Pradesh for meeting fixed charges."

11. The Ordinance No.4/2000 was promulgated to reconstitute the existing State Co-operative Societies ~~Act~~ in the State of M.P. by excluding from their area of operations a part of the territory ~~so excluded~~ of th

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State and to form new societies for the part of the territory so excluded. Clause 2 of the Ordinance defines the existing societies. Madhya Pradesh Rajya Sahkari Vipanan Sangh Maryadit falls within the term of existing societies. 'The Societies as reconstituted' means the existing societies as reconstituted in accordance with the provisions of Section 3(3) of the Ordinance. 'The corresponding new society' means the Chhattisgarh Rajya Sahkari Vipanan Sangh Maryadit in relation to the M.P. Rajya Sahkari Vipanan Sangh Maryadit as reconstituted. Number of other corresponding new societies have also been mentioned in clause (c) of Section 2 of the Ordinance.

12. Section 3(3) of the Ordinance reads as under

"3(1) xxxx xxxx xxxx

(2) xxxx xxxx xxxx

(3) If vacancies occur due to reconstitution of societies under sub-section(1), the reconstituted and the corresponding new societies may fill them by co-option or election or nomination by the Registrar or the State Government in accordance with the provisions of the Madhya Pradesh Co-operative Societies Act,1960 and the Rules made thereunder."

According to Section 3 of the Ordinance , the existing societies should be reconstituted by excluding from their area of operations the territories comprised in 16 districts which have now constituted the State of Chhattisgarh. The corresponding new societies shall be called as Chhattisgarh Rajya Sahakari Vipanan Sangh Maryadit. Sub-section (2) of Section 3 of the

Ordinance clearly provides that notwithstanding anything contained in M.P. Co-operative Societies Act and Rules made thereunder the registration of the existing societies shall not be cancelled and the office bearers, the Director and the representatives of the existing societies shall continue in their respective offices in the reconstituted or the corresponding new societies, as the case may be. It further provides that they may continue in their office till the expiry of their term. Sub-section (2) does nowhere provide that a no confidence motion cannot be moved against the corresponding new society. Shri Ravindra Shrivastava, learned Advocate General, is certainly justified in his contention that Section 3(2) has been enacted to avoid the wrath of Section 16(10) of the 1960 Act (M.P. Co-operative Societies Act, 1960). Section 16 of the Co-operative Societies Act provides that a society may resolve for its reorganisation by amalgamating itself with other society or, transferring its assets and liability in whole or in part to any other society or, dividing itself into two or more societies or, converting itself into a class of society, the object of which is materially different from that under which it has been classified under this Act. Section 16(2)(c) clearly provides for division of a society into two or more societies. Section 16(3) provides that if the Registrar is satisfied that it is essential in the public interest or in the interest of the members of the affected societies or necessary to secure the proper management

of any society, he may direct that any society or societies shall reorganise itself or themselves in any one ormore of the modes indicated in sub-section (2) of Section 16. The effect of amalgamation and division is provided under Section 16(10) of the Co-operative Societies Act. According to sub-section (10), where two or more societies have been amalgamated or a society has been divided or converted, the registration of such a society or societies shall be deemed to have been cancelled on the date of registration of amalgamated society or of the converted society or of the new societies into which the society may have been divided. On division of the existing societies, on reconstitution of the societies and coming into force of the corresponding new societies,the original registration would have come to an end and the original society would have become defunct. The words employed in a provision of law or in a Statute are to be interpretated in a manner which goes with the intention of the legislature.

13. In the matter of Union of India and others vs. Filip Tiago De Gama of Vedem Vasco De Gama,(1990)1 SCC 277, the Supreme Court while considering the purpose of incorporating transitional provision in any Act or amendment observed that the purpose is to clarify as to when and how the operative parts of the enactment are to take effect. The transitional provisions generally are intended to take care of the events during the period of transition. The Supreme Court further observed that the paramount object in statutory interpretation is to discover what the legislature

intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. "Words are certainly not crystals, transparent and unchanged". If there is obvious anomaly in the application of law the court could shape the law to remove the anomaly. If the strict gramatical interpretation gives rise to absurdity or inconsistency, the court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature. That could be done, if necessary even by modification of the language used. The legislators do not always deal with specific controversies which the courts decide. They incorporate general purpose behind the statutory words and it is for the courts to decide specific cases. If a given case is well within the general purpose of the legislature but not within the literal meaning of the statute, then the court must strike the balance.

14. In the matter of Skandia Insurance Co.Ltd. vs. Kokilaben Chandravadan and others, (1987) 2 SCC 654 , in para 13 of the judgment, the Supreme Court has observed as under :

> "13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions, there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same....."

15. In the matter of State ofTamil Nadu vs. Kodaikanal Motor Union Pvt.Ltd., (1986) 3 SCC 91, in paragraph 17 of the judgment, the Supreme Court has observed as under :

> "17. The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship.- We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eve 'some' violence to language is permissible."

16. The question of interpretation again came up for consideration before the Supreme Court in the matter of Reserve Bank of India vs. Peerless General Finance and Investment Co.Ltd. and others, (1987) 1 SCC 424, in para 33 of the judgment, the Supreme Court has observed as under :

> "Interpretation must depend on the text and context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual

interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these ~~gax~~ glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the court's construction."

17. In the matter of Kameshwar Singh vs. IVth ADDL.District Judge, Lucknow and others, (1986) 4 SCC 661, in para 5 of the judgment, the Supreme Court has observed as under :

"..... The Court must strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative

policy. The courts must therefore keep the legislative policy in mind in applying the provisions of the Act to the facts of the case."

18. In the matter of Jagdish Singh vs. Lt.Governor, Delhi and others, (1997)4 SCC 435, in para 7 of the judgment, the Supreme Court has observed as under :

"..... It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further, a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction....."

19. In the matter of R.S. Nayak vs. A.R. Antulay, (1984) 2 SCC 183, in para 18 of the judgment, the Supreme Court has observed as under :

"..... The question of construction arises only in the event of an ambiguity or the

> plain meaning of the words used in the statute would be self-defeating. The Court is entitled to ascertain the intention of the Legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the ~~xxx~~ mischief when the statute was enacted and to remove which the Legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it."

20. From the above judgments of the Supreme Court, the cardinal rule of the interpretation of the Statute appears to be that the Court must find the true intention of the legislature, must keep in mind that the legislature does not use the dead letters or superfluous language and the Court may ormay not add or deduct thewords looking to the contingency.

21. Learned counsel for the petitioner while referring to sub-section (2) of Section 3 of the Ordinance submitted that the said sub-section starts with the non-obstante clause, therefore, the said expression "notwithstanding anything contained in the M.P. Co-operative Societies Act,1960 and the Rules made thereunder" must be given their fullest effect and must be held to mean that the provisions of the Co-operative

Societies Act, which allow or permit the elected members/ Directors to bring a no confidence motion, shall not be applicable.

22. In the matter of Chandavarkar Sita Ratna Rao vs. Ashalata S.Guram, (1986) 4 SCC 447, the Supreme Court in para 67 of the judgment had observed as under :

> "67. A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment."

23. According to the Supreme Court, addition of these words in beginning are with a view to give the enacting part of the Section in case of conflict an overriding effect over the provision of the substantive Act. The argument of Shri Aradhe cannot be accepted in view of the rule of interpretation. A fair perusal and understanding of sub-section (2) of Section 3 of the Ordinance would mean that notwithstanding contained in the Act or the rules, the registration of the existing

society shall not be cancelled. The question of cancellation, as already considered, comes into play under Section 16(10) of the substantive Act. To avoid such a situation, the said non obstante clause has been introduced in or appended in the beginning of sub-section (2) of Section 3 of the Ordinance. The purpose of said non obstante clause is only to keep the said existing societies continue and allow the office bearers, the Directors and the representatives of the existing societies to continue in their respective office in the reconstituted or the corresponding new societies. The intention of the legislature does not appear that the provisions of the Co-operative Societies Act and the Rules made thereunder in wholesale would not be applicable and the office bearers, the Directors and the representatives shall enjoy an immunity against their removal for any reason. The purpose of enacting sub-section (2) is only to avoid the wrath of Section 16(10) of the Act. Sub-section (3) of Section 3 of the Ordinance simply provides that if vacancies occur due to reconstitution of societies under sub-section (1), the reconstituted and the corresponding new societies may fill them by co-option or election or nomination by the Registrar or the State Government in accordance with the provisions of the Madhya Pradesh Co-operative Societies Act,1960 and the Rules made thereunder. Sub-section (3) simply provides for filling of the vacancies but it does not say that unless the vacancies are filled, the corresponding new society shall not function.

24. The question for consideration still is whether

the office bearers, Directors or representatives of the corresponding new society cannot be removed ?

25. True it is that Rule 43-A(1) provides that a resolution for removal of the office bearer or a motion of no confidence cannot be brought against him within a period of one year from the date on which he has taken charge of the office but the question is that when the office bearer or the Chairman would take charge. Section 49 of the Co-operative Societies Act relates to annual general meeting. According to Section 49, a Society shall within three months before the close of the financial year call a general meeting of its members for the approval of the programme of the activities of the society and for election if the same has fallen due. Section 49(7-A) provides that the term of the committee shall be five years from the date on which first meeting of the committee is held. The term of the committee shall start from the date on which the first meeting of the committee is held and the commencement of the term would mean that the Chairman and the office bearers have taken charge of their office.

26. In the present case, the Chairman had taken charge of his office on 4-1-1997. By no stretch of imagination it can be held that he has assumed or taken charge of his office on 30-10-2000. Section 3(2) of the Ordinance does not say that the office bearers, Directors and the representatives shall take charge of their office in the reconstituted or the corresponding new societies. The said sub-section says that the said office bearers, the Directors and the representatives of the existing societies shall continue

in their respective offices in the reconstituted or the corresponding new societies. A Chairman or office bearer would take charge of their office on the date of the first meeting of the committee. The word 'continue' implies within it continuance of something or continuance of something which is in existence. What is not in existence cannot be continued. The use of the word 'continue' in Section 3(2) would mean that the office bearers, the Directors and the representatives who have already taken charge, and under the shelter of sub-section (2) of Section 3, ~~they~~ shall continue to hold the office. If the intention of the legislature was to give a new right to the said persons, instead of using the words "continue in their respective offices", they could straight-way say that such persons shall take charge of their respective offices. The interpretation put by Shri Aradhe is misconceived and runs contrary to the very intention of the legislature. So far as the question of the vacancy and its filling is concerned, that should not detain this Court unnecessarily because if there is no quorum, then the petitioner cannot continue as Chairman of corresponding new society. The intention of the legislature was to bifurcate the existing society into two and continue the same.

27. Section 48-C of the Co-operative Societies Act gives the power to the committee of a society to remove from office the Chairman and office bearers. The removal of such person has to be in accordance with the rules. Rule 43-A on which a very strong reliance has been placed now needs consideration by this Court.

28. So far as the application of the proviso ~~of~~ to Rule 43-A(1) of the Rules is concerned, the argument can straight-way be rejected in view of the above discussions.

29. Rule 43-A(1) reads as under :

> "43-A. Removal of the Chairman, or office bearers of the Committee-(1) The Committee of a society may, by a resolution passed by a majority of not less than two-third of the total elected members of the committee at a meeting held for this purpose, remove from the office of the Chairman or office bearer if he,-
> (a) is grossly negligent in discharge of his duties imposed on him by or under this Act or Rules made thereunder or Bye-laws of the society or has by a fraudulent act caused financial loss to the society;
> (b) persistently makes default in payment of his dues to the society;
> (c) has been adversely remarked by a competent court;
> (d) misuses the post held by him :
>
> Provided that such resolution shall not lie within a period of one year from the date on which he has taken charge of his respective office, or such resolution is rejected or accepted by the committee as the case may be."

The committee of a society may remove from the office the Chairman, if a resolution is passed by majority of not less than 2/3rd of the total elected members of the committee. Shri Aradhe submits that in accordance with byelaw no.28, the committee is to be constituted by 18 elected members, six ex officio members and three nominated members. According to him, unless 1/3rd of

the total elected members make a move for removal of the Chairman, motion by less than 1/3rd would be bad and as there are only seven elected members the resolution cannot be carried by majority of 2/3rd elected members. The conduction of the meeting would also be bad.

30. Shri Ravindra Shrivastava, learnedAdvocate General, submits that the words "total elected members" in the present context would mean total elected members available on the date when the committee is functioning and would not mean the total elected members who would constitute a committee.

31. In the opinion of this Court, the argument of Shri Aradhe must be rejected because if the vacancies are filled under sub-section (3) of Section 3 of the Ordinance either by co-option or by nomination and the elected members are not more than 13 or so, then a no confidence motion can never be moved. An unscrupulous office bearer can always avoid facing a no confidence motion in a democratic set-up even when people have lost confidence in him. The constitution of the committee may be by 18 elected members but note-4 appended to the bylaws of the Chhattisgarh Federation clearly says that the said Federation despite vacancy shall continue to work but within one year of the vacancy or during the general body meeting,whichever is earlier,shall co-opt the Member/Director to fill the vacancy. If the petitioner feels that under the provisions of the Ordinance he can continue on the post, then he cannot be allowed to say that the motion cannot be moved against

him. In the present case, the motion has been signed by five persons and if two third of the available elected persons pass a resolution against him then he has to vacate the office. The elected chairman must win the confidence of the other members / directors and should not on a misinterpretation of law be allowed to continue on the post. One must face the hard realities and should vacate an office if the people,who have enthroned him,wish to throw him.

32. So far as the arguments of the learned counsel for the petitioner relating to Panchayat Raj Adhiniyam, M.P.Municipalities Act and M.P.Municipal Corporation Act are concerned,the same do not need any consideration because the same hold the field in view of the language employed in particular provisions. Section 28 of the M.P.Panchayat Raj Adhiniyam provides that a on a motion of no confidence being passed by Janpad Panchayat by resolution passed by majority of not less than three forth of the elected members, present and voting and such majority is more than two third of the total number of elected members constituting the Janpad Panchayat for the time being. The key words in section 28 are " two third of the total number of elected members constituting the Janpad Panchayat for the time being". In the present case the words " constituting the committee" are missing. Rule 43-A simply provides that a resolution can be passed by the majority of not less than two third of the total elected members of the committee.

33. In the case of a Co-operative Society

committee, the committee may not suffer lack of quorum if the total number of directors including ~~the~~ elected ~~at~~ ex officio, nominated, or co-opted are more than half of the number of directors required for constituting the committee. The Co-operative Societies Act has given the authority in the hands of the elected members because they represent the members of the society at large. Section 43-A of M.P.Municipalities Act, 1961 again provides that the Vice President shall cease to hold the office if the motion is carried-out by majority of two thirds of the elected councillors present and voting in the meeting and if such majority is more than half of the total number of elected councillors constituting the council. Here again the key words are " that the resolution must be passed by two third of the elected councillors present and voting and the said majority is more than half of the total number of the elected councillors constituting the council".

34. Section 23-A of M.P.Municipal CorporationAct, 1956 also employs ~~the~~ and says that if the motion is carried by a majority of two thirds of the elected councillors present and voting in the meeting and if such majority is more than half of the total number of elected councillors constituting the corporation. So is the case under section 24 of the Municipal Corporation Act.

35. Present is not a case where the language similar to section 28 of the Panchayat Raj Adhiniyam, section ~~2~~ 43-A of M.P.Municipalities Act and Sections 23-A and 24 of the M.P.Municipal Corporation Act, 1956

has been employed. The argument being mis-conceived deserves to be rejected.

36. For the reasons aforesaid I am of the opinion that the petition is devoid of merits. It deserves to and is accordingly dismissed. However, there shall no be no orders as to costs.

Sd/-
R.S. Garg
Judge

18-6-2001.

Hande.